

Date: January 25, 1994

BQC-94-009

To: Nursing Homes
Facilities for the Developmentally Disabled

NH 5
FDD 4

From: Judy Fryback, Director
Bureau of Quality Compliance

Subject: Variances of Room Size and Residents Per Room
Regional Program Letter No. 93-23

The purpose of this memo is to transmit Regional Program Letter Number 93-23 regarding the variances of room size and residents per rooms in skilled nursing facilities and nursing facilities. This Program Letter also includes information regarding variances of beds per room in Intermediate Care Facilities for the Mentally Retarded.

In accordance with this Program Letter, the **facility** "**must** request and justify the variance on the HCFA-2567 in or as an attachment to their plan of correction. The justification must be resident specific." Minimum guidelines for the resident specific justification are outlined on page 2. Failure to justify the variance may result in the request for the waiver being denied.

Also, please note a deficiency will be cited each year if the rooms do not meet the size or beds per room requirements.

If you have questions or need further clarification, please contact your Regional Field Operations Manager.

Attachment

JF/MEHL/df 11813.nm

cc: -BQC Staff
-Office of Legal Counsel
-Ann Haney, DOH Admin.
-Kevin Piper, BHCF Dir.
-HCFA, Region V
-Illinois State Agency
-Ohio State Agency
-Michigan State Agency
-Indiana State Agency
-Minnesota State Agency
-WI Coalition for Advocacy
-Serv. Employees Internat'l Union
-WI Counties Assn.
-WI Assn. of Homes & Serv/Aging
-WI Health Info. Mgmt. Assn.
-Mark Bunge, BPH
-Renal Dialysis Network
-Commission on Geriatric Health
-WI Assn. of Nursing Homes
-WI Assn. of Medical Directors
-Admin., Division of Care and Treatment Facilities
-WI Assn. of Hospital SW and Discharge Planners
-Bd. on Aging & Long Term Care
-Bur. of Design Prof., DRL
-WI Homecare Association
-Bureau of LTS, DCS
-Bureau of DD Services
-WI Hospital Association
-Hospice Organization of WI
-LTC BQC Memo Subscribers
-Non-LTC BQC Memo Subscribers
-Secy, Dept. of Reg. & Licensing
-Director, Bureau of Aging DCS

March 1993

Refer to: CO8

Division Of Health Standards And Quality Regional Program Letter No. 93-23

Subject: Variances of Room Size and Residents per Room in SNFs and NFs

The State agency directors requested guidance on processing variances of the Federal requirements at 42 CFR 483.70(d)(1)(i) (data tag F461) regarding the number of residents per room and 483.70(d)(1)(ii) (data tag F462) regarding room size in Title XVIII SNFs and Title XIX NFs. The Federal requirements at 42 CFR 483.70(d)(3) provide for variations in these requirements in "...individual cases when the facility demonstrates in writing that the variations—(i) Are in accordance with the special needs of the residents; and (ii) Will not adversely affect residents' health and safety." As stated in the Interpretive Guidelines, the variations must be reviewed and renewed whenever the facility is certified.

HCFA has the authority to grant such variances in facilities (or distinct parts thereof) certified as SNFs, while the State agency has that authority for facilities (or distinct parts thereof) certified as NFs only.

Section 2116 of the State Operations Manual (SOM) also provides some instruction on the matter. Effective immediately, please ensure that your staff follow the SOM and the following guidelines in processing variances of these requirements.

In accordance with the requirements at 483.70(d)(3), surveyors should review the facility's documentation and verify that these variations are "in accordance with the special needs of the residents" in the room. The facility must request and justify the variance on the HCFA-2567 in or as an attachment to their plan of correction. The justification must be resident specific. Financial hardship is not part of the basis for granting a variation, and cannot be accepted as a justification.

Surveyors are to review each room which does not meet these requirements (F461 and/or F462) and for which a variance is requested. Surveyors must document their review of the deficient rooms and review of the facility's documented justification for the variance. The various surveyor worksheets (Forms HCFA-674, HCFA-675, HCFA-676, HCFA-678, HCFA-681) should reflect the findings of the review and determination of whether the criteria at 483.70(d)(3) are met.

Consider at a minimum these issues regarding the adequacy of the room for providing patient care:

Are there any hazards to resident health and safety?

Are there any negative outcomes as a result of the room size or number of residents in the room?

Is the room designed for adequate nursing care and the comfort and privacy of the resident?

Are the variations in beds per room or room size in accordance with the special needs of the resident?

Do residents have all of the required equipment and furniture?

Is there adequate space for any needed equipment or appliances, such as suction machines, walkers, wheelchairs?

Does the lack of space result in an inability for residents to keep personal possessions?

Does the lack of space result in the resident spending all or most of their non-sleeping time outside of their rooms?

Does the lack of space result in any infection control problems due to the proximity of residents or commingling of their soiled clothes, etc.

Has the resident expressed concerns in regard to the adequacy of space in the room?

Is the resident pleased with his/her room?

Record in a narrative your evaluation regarding presence or absence of: hazards, hindrances to movement or discomforts.

A deficiency must be cited **EACH YEAR** on the HCFA 2567 if bedrooms do not meet these requirements. The deficiency must include the room number, number of residents and square footage of each room not meeting the requirements. In addition, the deficiency must identify those Medicare or Medicare/Medicaid rooms, for which HCFA has variance authority, **separate** and **apart** from the Medicaid-only rooms, for which you as the State agency have variance authority.

If the survey reveals that you will be recommending a variance, place an asterisk (*) to the left of the data tag on the HCFA-2567. (See SOM Section 2116 (E).) It is the responsibility of the facility to request a waiver and provide adequate justification after a deficiency has been cited. Where you find that the facility has failed to justify a variance, reject the facility's request for waiver and obtain an acceptable plan of correction.

If a Title XVIII SNF or Title XIX SNF/NF requests a variance for a Medicare certified room, that has not previously been reviewed by the Regional Office (RO), submit the survey packet to the RO when the survey process is complete and you are prepared to make a recommendation. This is to be done regardless of whether it is a flagged case. Ensure that the packet includes the following:

- (1) A HCFA-1539, Certification and Transmittal, that includes in the remarks section your recommendation regarding the variance in the remarks section. If you recommend approval, items #L12 and 10(A)(8) or (9) should also be completed;
- (2) An attachment to the HCFA-1539 that includes the survey team's written narrative remarks in support of your recommendation. Detailed, room-specific rationale should be provided for any rooms for which a variance is not recommended.
- (3) A floor plan indicating the dimensions and location of beds.
- (4) The entire set of HCFA-2567s cited on the survey, including the facility's resident specific justification for the variance either in the plan of correction or as an attachment to it.

You are not required to submit the surveyor worksheets to the HCFA RO to support the variance; however, we will review the worksheets during an on-site SAEP visit.

If a variance in a SNF or SNF/NF has been approved by the RO in the past, and circumstances have not changed, follow the same survey and documentation procedure described above; however, you are not required to submit the variance request to RO for approval, UNLESS it is a flagged case or the specifics of the waiver have changed. For example, a new room is included in the variance or a room has been deleted. The admission of a new resident, or a change in a resident's condition does not require you to submit the packet to the RO for approval, UNLESS your recommendation has changed.

All flagged case kits sent to the RO must always include documentation of the variance justification. You are not required to conduct a review and submit documentation every time a new patient is admitted to the room; rather, conduct the review at the time of the recertification survey. Remember, however, that the FACILITY must be able to document their justification for the variance whenever any new resident is admitted to a room covered under a variance, and must be prepared to provide the surveyors with such documentation at the time of the recertification survey.

You should evaluate requests for variances by Title XIX NFs following these same procedures. Since the State has the authority for variance approval in NFs, submit the above variance documentation to the RO only when the NF case is flagged. If the NF case is not flagged, you are not required to submit the case to the RO; however, you will be expected to follow these same procedures and to maintain in your files the documentation to support the granting of such variances.

Also, Section 2140 B of the SOM provides guidance regarding variances of beds per room in Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) (See Federal regulation at 42 CFR 483.470(b)(1)(iii) and 483.470(b)(3)). Processing of ICF/MR variances of beds per room should be done in accordance with the above procedures pertaining to Title XIX NFs.

Variance approvals, like Life Safety Code or Nurse staffing waiver approvals, expire at the time of your recertification survey. They must be reevaluated, documented, justified and renewed at the time of the recertification survey. Your certification letters to the facility must address the approval or disapproval of variance requests and should stress to the facility that the variance approval is not permanent, but subject to reevaluation and reapproval at the time of the next annual resurvey.

If you have any questions regarding this procedure, please contact your program representative.

/s/ William F. Pfeifer
Branch Chief
Survey & Certification Operations Branch
Division of Health Standards and Quality